

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-151424-13

Date:

April 10, 2014

### Legend

Taxpayer =

Obligor =

Insurer =

Owners =

Country =

State =

Retailer =

Products =

\$X =

Reinsurance Contract =

Dear :

This responds to a December 23, 2013 letter from your authorized representative requesting rulings that, for federal income tax purposes, Taxpayer qualifies as an

insurance company taxed under § 831 of the Code. The representative submitted additional information in letters dated January 31, 2014 and March 3, 2014.

The rulings contained in this letter are based upon facts and representations submitted by Taxpayer accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

## FACTS

Retailer sells Products to customers. Retailer offers customers the option to also purchase a Product Service Contract (PSC). The PSC is issued by Obligor and provides coverage for the risk of loss due to certain mechanical failures. The PSC applies only after the manufacturer's warranty expires. Obligor insures its performance under the PSCs with Insurer, regulated by State as an insurance company.

In the proposed transaction, Taxpayer will be formed in Country and will enter into an arrangement with Insurer whereby Taxpayer will assume all of Insurer's obligations with respect to the PSCs sold by a specific Retailer. One of the equityholders of Taxpayer owns this Retailer. This arrangement will be Taxpayer's only business activity. For the current year, this Retailer will have many individual customers who purchase a PSC.

As consideration, Insurer will pay Taxpayer a predetermined portion of the amount Obligor paid to Insurer, net of a fixed amount per PSC as a commission (i.e., 'ceding commission').

Taxpayer represents that the PSCs constitute insurance for Federal income tax purposes. Upon information and belief, Insurer is an insurance company taxable under § 831. Further, Taxpayer's arrangement with Insurer will be more than half of the business done by Taxpayer during this taxable year.

## LAW AND ANALYSIS

Section 831(a) of the Internal Revenue Code provides that taxes, as computed in § 11, are imposed for each taxable year on the taxable income of each insurance company other than a life insurance company. Section 831(c) prescribes that the term "insurance company" is defined by § 816(a). Section 816(a) defines the term "insurance company" to mean any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

Neither the Code nor the regulations define the terms "insurance" or "insurance contract." *Helvering v. Le Gierse*, 312 U.S. 531 (1941) is the seminal case defining

“insurance” for federal income tax purposes. The Supreme Court stated that “[h]istorically and commonly insurance involves risk-shifting and risk-distributing.”

In Situation 1 of Rev. Rul. 2009-26, 2009-2 C.B. 366, the Service considered a ninety percent quota share arrangement between IC Y, with 10,000 policyholders and Z, which conducted no other business. It concluded that Z qualified as an insurance company because Z was reinsuring risks underwritten by an insurance company, which was more than half of the business of Z for the year.

Taxpayer’s transaction is similar to the one described in Situation 1 of Rev. Rul. 2009-26. The PSCs shift the customers’ risks of loss due to mechanical failure to Obligor. Obligor transfers this risk to Insurer, which will transfer these risks to Taxpayer. Taxpayer represents that the PSC constitutes insurance. Accordingly, Taxpayer qualifies as an insurance company.

## RULING

We rule that, for federal income tax purposes, Taxpayer qualifies as an insurance company taxed under § 831 provided the contract accounts for more than half of Taxpayer’s business done during the taxable year.

## CAVEATS

Except as expressly provided herein, no opinion is expressed concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John E. Glover  
Senior Counsel  
(Financial Institutions and Products)

cc: